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10 **UNITED STATES DISTRICT COURT**

11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 DALE HOLZWORTH SR., individually and
13 on behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 SAMSUNG ELECTRONICS AMERICA,
INC., a New York corporation, and
17 SAMSUNG ELECTRONICS CO., LTD., a
Foreign corporation.,

18 Defendants.
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CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Dale Holzworth Sr. ("Plaintiff") brings this Class Action Complaint on behalf of himself and all other similarly situated individuals, by and through his attorneys, against Defendants Samsung Electronics America, Inc. and Samsung Electronics Co. Ltd. (collectively hereinafter, "Samsung"), and complains and alleges upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

I. NATURE OF THE ACTION

1. Samsung manufactures and sells smartphones which pose a threat to the safety of consumers. These dangers made international headlines when numerous Samsung Note 7 devices exploded and burst into flames leading to a complete recall of the product. Samsung has yet to determine the cause of the problems with the Note 7, and continues to sell, market, and distribute other smartphones which are at risk of overheating, fire and explosion. Samsung recalled the Note 7 while leaving other dangerous products in the marketplace. Unfortunately, the problem is not limited to the Note 7.

2. Samsung has been made repeatedly aware of the issues with its smartphones, yet has failed to warn consumers of the dangers posed by the lithium ion batteries in the devices. Samsung markets its phones as durable, reliable, always available, and the "hub" of consumers' lives. Samsung expects and encourages consumers to use their phone for all aspects of their lives and to always have their phone with them. Despite this expected ubiquity, Samsung conceals from consumers that the products are dangerous.

3. Samsung designs, manufactures and advertises the batteries in its smartphones to have maximum duration with minimum charge times. Samsung also designs, manufactures and advertises its smartphones to have superior computing capacity and power, and to effectively run a multitude of applications and processes simultaneously. The desire to design a product with each of these, and other, qualities led Samsung to manufacture smartphones which pose a risk of overheating, fire and explosion. While Samsung recalled the Note 7, it has failed, and continues to fail, to recall other dangerous products, failed to warn consumers of the dangers they pose, and

1 failed to adequately respond to consumers whose phones have suffered from overheating, fire and
2 explosion.

3 4. The extreme risk of overheating, fire, and explosion along with Samsung's
4 concomitant refusal to recall the products leaves Plaintiff and each member of the Class owning
5 phones that have the propensity for the following:



25 **II. JURISDICTION AND VENUE**

26 5. This action is within the jurisdiction of this Court by virtue of 28 U.S.C. §
27 1332(d)(2). Plaintiff and Samsung are citizens of different states and the amount in controversy of
28 this action exceeds the sum of \$5,000,000, exclusive of interest and costs.

1 6. This Court has personal jurisdiction over Plaintiff Dale Holzworth Sr. because he
2 submits to the Court's jurisdiction in this case.

3 7. This Court has personal jurisdiction over Defendant Samsung Electronics America,
4 Inc., because it conducted and continues to conduct substantial business in this District, and has
5 sufficient minimum contacts with this District, through its promotion, sales, and marketing of
6 Samsung devices within this District, to render the exercise of jurisdiction by this Court
7 permissible.

8 8. This Court has personal jurisdiction over Defendant Samsung Electronics Co., Ltd.,
9 because it conducted and continues to conduct substantial business in this District, and has
10 sufficient minimum contacts with this District, through its promotion, sales, and marketing of
11 Samsung devices within this District, to render the exercise of jurisdiction by this Court
12 permissible.

13 9. Venue is proper in this Court under 18 U.S.C. § 1965(a) because Samsung
14 promotes, sells, and markets a substantial amount of phones in this District. Venue is also proper
15 under 28 U.S.C. § 1391(b)(3) because Samsung is subject to this District's personal jurisdiction
16 with respect to this action.

17 **III. THE PARTIES**

18 10. Plaintiff Dale Holzworth Sr. is a resident of Hopkinton, Massachusetts. Plaintiff
19 purchased a Samsung Galaxy S7 Edge smartphone in the Commonwealth of Massachusetts, and
20 suffered the injuries and damages complained of herein in the Commonwealth of Massachusetts.
21 Plaintiff is a citizen of the Commonwealth of Massachusetts.

22 11. On information and belief, Defendant Samsung Electronics Co., Ltd. ("Samsung
23 Ltd.") was, at all relevant times mentioned herein, a foreign corporation organized and existing
24 under the laws of the Republic of Korea, with its principal place of business located at 129
25 Samsung-Ro, Yeongtong-Gu, Suwon-si, Gyeonggi-do, Korea. Samsung Ltd. is the parent
26 company of Samsung Electronics America, Inc. Samsung Ltd. is a foreign citizen of Korea.

27 12. On information and belief, Defendant Samsung Electronics America, Inc.
28 ("Samsung America") was, at all relevant times mentioned herein, a New York corporation

1 organized and existing under the laws of the State of New York, with its principal place of
 2 business located at 85 Challenger Road, Ridgefield Park, New Jersey 07660. Samsung America is
 3 registered with the Secretary of the Commonwealth of Massachusetts and the California Secretary
 4 of State to conduct business in Massachusetts and California, and touts itself as “a recognized
 5 innovation leader in consumer electronics design and technology.”¹ Samsung America is a wholly
 6 owned subsidiary of Defendant Samsung Ltd. Samsung America is a citizen of New York and
 7 New Jersey.

8 13. Samsung is the largest seller of smartphones in the world, dominating 22.8% of the
 9 worldwide market in the second quarter of 2016, nearly double the market share of the next highest
 10 competitor.² In 2015, Samsung reported \$200 trillion won in sales³ and had over 325,000
 11 employees worldwide.⁴ As of March 2016, Samsung held the largest share of the United States’
 12 smartphone market, at 28.8 percent.⁵

13 14. At all times herein mentioned, Samsung Ltd. and Samsung America acted in
 14 concert, and Samsung America acted as agent on behalf of its parent, Samsung Ltd. Each of the
 15 Samsung entities aided and abetted, encouraged, and rendered substantial assistance to the other
 16 Samsung entity in breaching their obligations to Plaintiff and the Class, as alleged herein.

17 **IV. FACTUAL BACKGROUND**

18 **A. SAMSUNG’S “GALAXY S” AND “NOTE” PRODUCTS.**

19 15. Samsung makes Android-based mobile devices, including its popular “Galaxy” line
 20 of smartphones, phablets, and tablets. New flagship smartphones are released each year and are
 21 identified as part of the “Galaxy S” series. The first generation “Galaxy S” phone hit the market in
 22 June 2010, and was followed in subsequent years by the SII, SIII, S4, S5, S6, and S7. In between

23
 24 ¹See Samsung, U.S. Divisions, available at:
http://www.samsung.com/us/aboutsamsung/samsung_electronics/us_divisions/.

25 ² The next closest competitor was Apple with only 11.7% in worldwide sales of smartphones. “Smartphone
 26 Vendor Market Share, 2016 Q2,” International Data Corporation (IDC), available at:
<http://www.idc.com/prodserv/smartphone-market-share.jsp>.

³ Approximately \$179 billion USD.

27 ⁴“Fast Facts” Samsung Newsroom (last visited March 22, 2017) available at
<https://news.samsung.com/global/fast-facts>.

28 ⁵Spence, Ewan “Samsung Topples Apple as Galaxy S7 Defeats iPhone” available at
[http://www.forbes.com/sites/ewanspence/2016/05/04/samsung-overtakes-apple-us-smartphone-](http://www.forbes.com/sites/ewanspence/2016/05/04/samsung-overtakes-apple-us-smartphone-sales/#dcc15d3289f9)
[sales/#dcc15d3289f9](http://www.forbes.com/sites/ewanspence/2016/05/04/samsung-overtakes-apple-us-smartphone-sales/#dcc15d3289f9).

the roll-out of a new flagship model, Samsung commonly releases one or more iteration of the prior flagship model. These interim iterations are often followed by variants that have the word “Edge,” “Edge+,” or “Active” added to the model name. *See* Table in ¶17.

16. In late 2011, Samsung began selling a high-end smartphone/tablet hybrid which it called the “Galaxy Note.” Galaxy Note products were larger than regular smartphones and included a stylus for additional functionality.

17. Since April 2015, Samsung has released the following Galaxy S6, S7 and Note⁶ models:

GALAXY S SERIES	
<u>Model</u>	<u>Release Date</u>
S6	April 2015
S6 Edge	April 2015
S6 Active	July 2015
S6 Edge+	August 2015
S7	March 2016
S7 Edge	March 2016
S7 Active	June 2016
GALAXY NOTE SERIES	
<u>Model</u>	<u>Release Date</u>
Note 5	August 2015
Note 7	August 2016

18. The “Galaxy S” and “Galaxy Note” phones are powered by lithium ion batteries. Lithium-ion batteries power a host of consumer electronic devices, including computers and power tools. Prior to the Note 5 and S6 models, the battery was removable. For the Note 5, Note 7, S6, and S7 models, the battery is encompassed in the product and is no longer removable.

19. The batteries in Samsung’s phones are measured in milli-ampere hours (“mAh”), which is a unit of electric charge that expresses the capacity of a battery – how much total energy a battery can discharge before needing to be recharged. A battery’s discharge rate is the amount of

⁶ Samsung did not release a “Note 6” device.

1 current being drawn from the battery. The length of time a battery will run depends on both the
2 battery's capacity and discharge rate.

3 20. The Note 7 and S6 Active use lithium ion batteries with the same capacity. The S6
4 Edge+, S7 and Note 5 use lithium ion batteries with the same capacity. The S7 Edge and S7 Active
5 both use lithium ion batteries with greater capacity than the Note 7.

6 21. The following chart shows the battery capacity of Samsung's Note and Galaxy S
7 devices:

GALAXY S SERIES	
<u>Model</u>	<u>Battery Capacity</u>
S6	2,550 mAh
S6 Edge	2,600 mAh
S6 Edge+	3,000 mAh
S7	3,000 mAh
S6 Active	3,500 mAh
S7 Edge	3,600 mAh
S7 Active	3,900 mAh
GALAXY NOTE SERIES	
<u>Model</u>	<u>Battery Capacity</u>
Note 5	3,000 mAh
Note 7	3,500 mAh

22 22. The Galaxy S6 Active, the Galaxy S7 Edge, and the Galaxy S7 Active all contain
23 batteries with at least the capacity of the recalled Note 7 battery.

24 23. The S6, S6 Edge, S6 Edge+, S6 Active, S7, S7 Edge, S7 Active, and Note 5 (the
25 "Subject Phones"), as well as the Note 7, all pose a risk of overheating, fire and explosion as they
26 were designed, engineered, developed, manufactured, produced and/or assembled in a substantially
27 similar manner to the Note 7. While Samsung has recalled the Note 7, it has not done so with
28 respect to the Subject Phones.

1 ///

2 ///

3 **B. THE DANGER OF THE LITHIUM ION BATTERIES IN SAMSUNG'S**
 4 **SMARTPHONES.**

5 24. The dangers posed by lithium ion batteries made headlines recently when numerous
 6 Samsung Note 7 devices exploded and burst into flames. This caused the Consumer Product Safety
 7 Commission ("CPSC") to order a formal recall of the Note 7. The Note 7 devices have also been
 8 banned from all commercial air travel. Samsung initially offered an exchange program for the Note
 9 7. While investigation into the Note 7 defect is ongoing, Samsung has admitted an unspecified
 10 "battery cell issue" is the root problem.

11 25. Lithium ion batteries are often used in consumer electronics. However, they present
 12 inherent risks which require software, hardware and design solutions and protections to operate
 13 safely. The electrolyte material in the batteries is highly volatile, flammable, and potentially
 14 explosive if it gets too hot. Dr. Donald Sadoway, a Materials Chemistry professor at MIT,
 15 described why lithium ion batteries explode in an interview with *Time Magazine*:⁷

16 If the temperature gets high enough . . . at some point, if you get up to about 400-
 17 500 degrees Centigrade, the metal oxide in the negative electrode actually starts
 18 liberating oxygen. And that's really dangerous, because now, instead of having a
 19 fire . . . getting its oxygen from the air surrounding it, it's getting its oxygen from
 inside the battery itself. ***The term of art is, this has now become a bomb.*** You've
 got fuel and oxygen in the same place at the same time.

20 26. This is often referred to as a "thermal runaway" event, after which the battery will
 21 catch fire or explode. A thermal runaway event generates high temperatures exceeding 1,100
 22 degrees Fahrenheit. It can happen in a variety of circumstances, including when the battery is
 23 overcharged, when it is rapidly discharged, when there is a cell defect, when there is cell damage,
 24 and in heat.⁸ According to Scientific American:

26 ⁷ "We Asked a Battery Expert Why Samsung's Phones Are Catching Fire, by Alex Fitzpatrick, published
 27 by Time Magazine on September 9, 2016 (emphasis added), available at:
<http://time.com/4485396/samsung-note-7-battery-fire-why/>

28 ⁸ See, Federal Aviation Administration ("FAA"), Summary of Findings from Previous Tests – Lithium-ion,
 available at: [http://www.icao.int/safety/DangerousGoods/pptfaa/Full scale ion and large format.pptx](http://www.icao.int/safety/DangerousGoods/pptfaa/Full%20scale%20ion%20and%20large%20format.pptx).

1 ... *faulty batteries can be overcharged. Well-made batteries will stop charging*
 2 *automatically once they're full*, but that's not always the case for faulty batteries,
 3 If left plugged in for too long, the lithium ions can collect in one spot and be
 4 deposited as metallic lithium within the battery.... Also, heat from the overcharging
 5 can cause oxygen bubbles within the gel, which are highly reactive with metallic
 6 lithium.⁹

7 27. In cellular phones, both software and hardware regulate the temperature, charging
 8 and use of the battery. If the software protocols are programmed or set incorrectly a thermal
 9 runaway event can occur. A careless manufacturing process that leaves unwanted material in the
 10 battery can also lead to thermal runaway. A poorly manufactured separator that breaks can also
 11 lead to thermal runaway. A defective thermal spreader can also lead to a thermal runaway.

12 28. Samsung initially stated the Note 7's problem was limited to only one of its two
 13 battery supply sources. After the initial recall and exchange of the Note 7 devices, more explosions
 14 of the devices were reported. On October 13, 2016, Samsung announced it was recalling all Note 7
 15 devices, original and exchanged. As reported by the Wall Street Journal¹⁰:

16 The X-ray and CT scans showed a pronounced bulge.

17 After reports of Galaxy Note 7 smartphones catching fire spread in early
 18 September, Samsung Electronics Co. executives debated how to respond. Some
 19 were skeptical the incidents amounted to much, according to people familiar with
 20 the meetings, but others thought the company needed to act decisively.
 21 A laboratory report said scans of some faulty devices showed a protrusion in Note 7
 22 batteries supplied by Samsung SDI Co., a company affiliate, while phones with
 23 batteries from another supplier didn't.

24 It wasn't a definitive answer, and there was no explanation for the bulges. But with
 25 consumers complaining and telecom operators demanding answers, newly
 26 appointed mobile chief D.J. Koh felt the company knew enough to recall 2.5
 27 million phones. His suggestion was backed by Samsung's third-generation heir
 28 apparent, Lee Jae-yong, who has advocated for more openness at one of the world's
 29 most opaque conglomerates.

30 That decision in early September—to push a sweeping recall based on what turned
 31 out to be incomplete evidence—is now coming back to haunt the company.

32 Two weeks after Samsung began handing out millions of new phones, with batteries
 33 from the other supplier, the company was forced to all but acknowledge that its
 34 initial diagnosis was incorrect, following a spate of new incidents, some involving

⁹ <https://www.scientificamerican.com/article/the-science-behind-samsung-phone-battery-fires/> (emphasis added).

¹⁰ Cheng, Jonathan and McKinnon, John, "The Fatal Mistake that Doomed Samsung's Galaxy Note," available at <http://www.wsj.com/articles/the-fatal-mistake-that-doomed-Samsungs-galaxy-note-1477248978>.

1 supposedly safe replacement devices. With regulators raising fresh questions,
 2 Messrs. Lee and Koh decided to take the drastic step of killing the phone outright.

3 29. Samsung instructed consumers who had a Note 7 device to “please power down
 4 immediately” and “contact the carrier or retail outlet where they purchased their device.”¹¹
 5 Samsung stated that it was announcing the program “in cooperation with the U.S. Consumer
 6 Product Safety Commission and in partnership with carriers and retailers.”¹²

7 30. Consumers could turn in their Note 7 devices (both the original and exchanged
 8 versions) for refunds, exchanges for Samsung products or other smartphones and offered between
 9 \$25 and \$100 “bill credits.” Consumers who exchanged their Note 7 for other Samsung devices
 10 were offered \$100 bill credits.¹³ Consumers who elected to receive a refund or purchase a different
 11 brand of smartphone, were offered \$25 bill credits, “less any incentive credits already received.”¹⁴

12 31. Outside of the Note 7 recall, Samsung has taken no steps to recall or warn
 13 consumers about the risks of overheating, fire and explosion posed by their Subject Phones.

14 C. **SAMSUNG WAS AND IS AWARE OF OVERHEATING PROBLEMS WITH
 15 THE SUBJECT PHONES.**

16 32. Samsung made the choice to increase the power of the battery in the Subject Phones
 17 despite knowing that older models and generations with less powerful batteries were experiencing
 18 problems with overheating, catching fire, and even exploding. The problem dates back several
 19 years; and well before the release of the Subject Phones. It is only with the Note 7 that complaints
 20 of overheating, fire and explosion became so overwhelming that Samsung could no longer ignore
 21 or mask the problem.

22 33. Samsung had good reason to be concerned about overheating in its smartphones.
 23 The occurrence of similar incidents in other models of Samsung phones and electronic devices
 24 have been reported through the media and consumer protection agencies for years. Despite
 25 knowledge and awareness, Samsung failed to fix the root problem, notify or warn the public of the

26 ¹¹ See “Samsung Note7 Safety Recall” available at <http://www.samsung.com/us/note7recall/>, updated
 27 October 13, 2016.

¹² *Ibid.*

28 ¹³ For consumers who had already exchanged their phones, they were offered a \$75 bill credit in addition to
 the \$25 bill credit from the exchange program. *Ibid.*

¹⁴ *Ibid.*

1 dangers its electronic devices presented, initiate a recall of all devices where overheating,
 2 explosion, and/or fire were foreseeable, or otherwise address the problem. Instead, Samsung
 3 provided individual consumers with replacements without disclosing the risks and defects in the
 4 Subject Phones.

5 34. The CPSC has recorded numerous consumer incident reports of Samsung phones
 6 and accessories overheating, catching fire, and even exploding. The reports relate to a variety of
 7 devices—including the Galaxy SII, Galaxy Tab 2, Galaxy Tab 3, Galaxy SIII, Galaxy S4 Active,
 8 Galaxy S5, Galaxy S6, Galaxy S6 Edge, and Galaxy S6 Active. The consumer complaints of such
 9 problems date back to August of 2011.

10 35. Consumer reports to CPSC regarding unsafe Samsung Galaxy S and Galaxy Note
 11 products (not including complaints regarding the recalled Note 7) include the following:

- 12 • On December 6, 2012, a Health Care Professional reported that a Galaxy SIII got
 13 “warm” and caused a “partial thickness” burn on a consumer’s right cheek. CPSC
 Report No. 20121206-FE67D-2147461269.
- 14 • On February 28, 2013, a consumer reported that he or she observed a Galaxy SII
 15 “overheating” and “battery swelling.” The consumer expressed “[f]ear of battery
 fire.” CPSC Report No. 20130228-0C612-2147458351.
- 16 • On August 16, 2013, a consumer reported that a Galaxy SII began “hissing,” made
 17 a loud “POP,” and filled the room with a noxious smoke. The incident occurred
 while the device was charging at night. CPSC Report No. 20130816-D0B19-
 18 2147453034.
- 19 • On January 20, 2014, a consumer reported that a Samsung Galaxy SIII and charging
 cord became “visibly burned and melted.” The consumer reported “[i]t looks like it
 20 had been on fire momentarily.” The incident occurred while the device was
 charging. CPSC Report No. 20140120-0DFDC-2147448018.
- 21 • On April 17, 2014, a consumer reported that a Galaxy S4 started to “smell” and
 22 “smoke,” causing the charger to melt into the phone. The incident occurred while
 the device was charging. CPSC Report No. 20140417-51573-2147445343.
- 23 • On April 25, 2014, a consumer reported that a Galaxy SIII made a “loud pop,” and
 24 “the battery ... shot the back cover and battery out of the phone spraying a black
 fluid out and pouring out black smoke ... the battery pack was red in color and
 25 smoking hot” The device was charging at the time. CPSC Report No.
 20140425-7FBF6-2147445126
- 26 • On May 1, 2014, a consumer reported that a Galaxy S4 became “extremely hot”
 27 and burned the consumer’s son. The consumer contacted Samsung about the
 incident, but they had not called back at the time of the report. The consumer
 28 reported he felt the “phone is dangerous.” CPSC Report No. 20140501-C2DA6-
 2147444903.

- 1 • On May 12, 2014, a consumer reported that a Galaxy S4 “became so hot it melted
2 the cable. I’m not sure if there was fire but the device was certainly smoking.” The
device was charging at the time. CPSC Report No. 20140512-5B5C8-2147444606.
- 3 • On September 29, 2014, a consumer reported that a Galaxy S4 began smoking and
4 the “battery caught on fire,” damaging the consumer’s floor. The consumer reported
the incident directly to Samsung. CPSC Report No. 20140929-BD00A-1431381
- 5 • On November 2, 2014, a consumer reported that a Galaxy S4 began burning in the
6 consumer’s pocket. When the consumer pulled the phone out of his or her pocket, it
seared the consumer’s skin. The consumer further reported “[t]he temperature was
7 equivalent to pulling something out of the oven after baking or boiling water and
dunking your hand in it.” CPSC Report No. 20141102-D37FA-2147439274.
- 8 • On November 13, 2014, a consumer reported that a refurbished Galaxy S4 awoke
9 the consumer with the smell of burning electronics, and burned the consumer’s
hand before the consumer realized “the phone was starting to catch fire.” The
10 consumer further reported that “[t]he charging port was burnt, the cord was melted,
and [his or her] sheets and mattress pad were burnt.” CPSC Report No. 20141113-
11 0F420-2147438923.
- 12 • On December 30, 2014, a consumer reported that a Galaxy S4 “literally melted to
[the consumer’s] counter” while charging. The consumer further reported that “[t]he
13 area around the charging port was black and melted.” CPSC Report No. 20141230-
C86A9-2147437158.
- 14 • On July 24, 2015, a consumer reported that a Galaxy Note 2 “became hot,” and
15 emitted “large amounts of smoke” and “sparks.” The consumer further reported that
the battery “projected out of the back of the device ... leaving burn marks and a
16 hole in the carpet.” CPSC Report No. 20150724-ABD3B-2147429986.
- 17 • On August 9, 2015, a consumer reported that a Galaxy S5 began “smoking from the
point at which the charge plugs into the phone.” Both the phone and charger had
18 “burn marks and were melted slightly.” The consumer further reported that he or
she feared the phone or charger would have started a fire if the consumer had not
19 woken up. CPSC Report No. 20150809-FD1A7-2147429518.
- 20 • On September 19, 2015, a consumer reported that the Samsung charging device for
a Galaxy S6 was “overheating excessively under normal use.” “The consumer
21 further reported that the heating was “severe” enough to burn the consumer. CPSC
Report No. 20150919-9088D-2147428266.
- 22 • On December 29, 2015, a consumer reported that a Samsung phone charger for a
“Newer Samsung Galaxy” had “almost started on fire.” The “phone was red hot,”
23 the tip of the charger was black, and the phone was “completely toast.” The
consumer further reported: “Totally unsafe! My house could have started on fire.”
24 CPSC Report No. 20151229-96F83-2147425364.
- 25 • On January 18, 2016, a consumer reported that a Galaxy S6 Edge became
26 “extremely hot to touch,” and developed a crack in the screen. CPSC Report No.
20160118-B87EB-2147424570.
- 27 • On January 23, 2016, a consumer reported that a Galaxy S6 began emitting a
28 “strange smell,” and that the Samsung charger was “warped, melted, and
discolored.” The consumer further reported that the phone was “extremely hot” to

the point it would have “burned a small child.” The incident occurred while the phone was charging. CPSC Report No. 20160123-F8845-2147424397.

- On January 14, 2016, a consumer reported that a charging device for a Galaxy S4 got “extremely hot and started to melt.” CPSC Report No. 20160114-AC115-1545877.
- On March 21, 2016, a consumer reported that a Samsung charging device for a Galaxy S6 “caught on fire and melted.” CPSC Report No. 20160321-83C90-2147420788.
- On September 16, 2016, a consumer reported that a Galaxy S4 Active “melted” into the charging cable. The phone burned the consumer’s finger. The consumer further reported that the phone “probably could have got a fire.” CPSC Report No. 20160916-61984-2147414098.
- On September 16, 2016, a consumer reported that the battery of a Samsung Galaxy S5 is “bulging” and the phone is “warm to touch.” The consumer further reported that Samsung refused to do anything other than sell the customer a new battery because the phone “had not yet exploded.” CPSC Report No. 20160916-13A98-2147414102.
- On September 16, 2016, a consumer reported that a Samsung Galaxy S6 Active “burned up while charging via a Samsung charger.” The incident set off smoke alarms, filled the customer’s bedroom with smoke, charred curtains and bedding, and burned through the hardcover of a book. The consumer reported that she contacted Samsung about the incident, and that Samsung gave her the “runaround.” CPSC Report No. 20160916-1BB3F-2147414093.

36. Numerous additional complaints have been submitted by consumers to saferproducts.gov. Reports at saferproducts.gov related to the Subject Phones include the following:

- On November 16, 2015, a consumer reported suffering “a first degree burn of my right ring finger due to excessive heat from the charger at the point of connection to the phone while on ‘fast charge’ mode.”
- On September 23, 2016, a consumer reported using a Samsung Galaxy S6 “when it started reporting it no longer had service. It then got very hot near the power button. I burnt my finger trying to get it to turn off.” The consumer explained that “Despite getting hot enough that I got a burn that blistered, the phone has never reported itself as being overheated.”
- On September 21, 2016, a consumer reported a Galaxy S6 “heats up to the point where it can’t be used because it’ll burn,” and that Samsung had refused to address his serious concern about his own safety and risk of fire or explosion.
- On September 19, 2016, a consumer reported that his or her five month old Galaxy S6 charger was overheating and had “melted plastic from the overheating of the charger.” The consumer reported the “Heating is severe,” and that the phone “gets very hot to the touch. . . enough to burn myself.” The consumer also reported that the “chargers are original chargers, from the box . . . that came with the phone.”

- 1 • On August 17, 2016, a consumer reported being burned and scarred as a result of repeated overheating of their Galaxy S6 Edge.
- 2 • On January 18, 2016, a consumer reported that “during operation” of his or her
- 3 Galaxy S6 Edge, it “became extremely hot to touch and the screen developed a crack.”
- 4 • On September 30, 2016, a consumer reported the following about a Galaxy S6
- 5 Active: “9-26-2016 I woke up at 5:30 took phone off charger and did usual
- 6 checking email and played games on phone until 6:30. Phone was not hot that I
- 7 could tell. After taking kids to the bus about 20 minutes without using the phone I
- 8 took it out of my pocket laid it on my bed and it popped really loud and start
- 9 spewing smoke and melted plastic out of the phone on both ends, screen shattered
- 10 and the case melted. The smoke alarms went off and the phone was too hot to
- 11 touch.”
- 12 • On September 16, 2016, a consumer reported a Galaxy S6 Active “burned up while
- 13 charging via a Samsung charger. The smoke alarms went off and our bedroom was
- 14 filled with smoke. There was char on the curtains about 2 feet away from the bed
- 15 and charred marks on the headboard; the phone burned through the hardcover of a
- 16 book.” The consumer complained about receiving the “runaround” from Samsung
- 17 customer service and suffering through substantial delays prior to receiving a
- 18 replacement and check for the property damage.
- 19 • On September 2, 2016, a consumer reported the battery in a Galaxy S6 Active
- 20 caught fire and nearly caused a house fire.
- 21 • On June 21, 2016, a consumer reported that at “1230am on June 9, 2016 using the
- 22 Samsung charger that is issued with the phone. The phone was sitting on the side of
- 23 the bed, with nothing covering it, and around 4am [] it pretty much exploded and
- 24 caught on fire. The sound was so loud it woke my child up in the next room. The
- 25 fire burnt through my sheets, mattress . . .”
- 26 • On October 1, 2016, a consumer reported a Galaxy S7 was having significant
- 27 problems with the “phone getting extremely and dangerously hot.” The consumer
- 28 reported the problem to Samsung, but was told that the S7 was not affected by the
- recall of the Note7 and that Samsung would not replace it because it was outside the
- 30-day warranty period. According to the report, the problem worsened until the
- “phone got so hot that it melted into the [] case.”
- On September 26, 2016, a consumer reported her phone charger cord was “hot,
- melted and smoking” while her Galaxy S7 was plugged in and charging.
- On September 16, 2016, a consumer reported her “two-month-old Samsung S7
- Edge got so hot that it burned my hand and I could not hold onto it.”
- On September 10, 2016, a consumer reported he had placed his S7 Edge in his
- “right front pocket” and that “shortly thereafter he noticed his phone whistling,
- screeching, and vibrating, as well as smoke coming from his pocket.” According to
- the report, the consumer suffered burns to his hand when he tried to remove the
- phone from his pocket and that, “without warning the S7 Edge exploded and caught
- fire” causing second and third degree burns.

37. Samsung is and was aware of these reports and the hazards posed by their phones

1 the reports by responding on the consumer agency's website with a boilerplate response. Many
 2 consumers report that Samsung failed to take their complaints seriously, and refused to provide
 3 any compensation beyond merely replacing the dangerous and defective phones with similarly
 4 risky products.

5 38. Samsung even took specific steps to attempt to address the overheating issues in
 6 designing the hardware for the S7, relying on unconventional technology and unproven designs to
 7 attempt to provide a partial solution to the overheating problems in its smartphones hardware
 8 designs.

9 39. Samsung's website describes the new hardware used to attempt to address these
 10 concerns, known as a "thermal spreader." According to Samsung, the thermal spreader it designed
 11 was "unlike conventional thermal spread technology."¹⁵ Samsung's team responsible for designing
 12 the system further stated that "due to the spatial limits of smartphones, the cooling system's
 13 cooling capacity alone is not enough to cool the device. We need to calculate the amount of
 14 electric current and optimize the heat control algorithm to minimize occurring heat. In other words,
 15 the new thermal spreader hardware controls the heat more effectively but the software heat-control
 16 algorithm must be made compatible to ensure best performance."¹⁶

17 **D. SAMSUNG CONCEALED AND FAILED TO DISCLOSE THE DANGERS**
 18 **POSED BY THE SUBJECT PHONES.**

19 40. Despite knowledge of the overheating problem existing across multiple models and
 20 generations of Samsung phones and despite choosing to put increasingly powerful batteries in
 21 smaller spaces in the Subject Phones, Samsung concealed from consumers the risks of fire,
 22 explosion and overheating.

23 41. Samsung marketed the S6 Active as indestructible, innovative, and better than ever.
 24 According to Samsung: "AT&T is bringing its customers the toughest and most advanced member
 25 of the Galaxy S family. The Samsung Galaxy S6 Active . . . is designed with your active lifestyle
 26
 27

28 ¹⁵ See <https://news.samsung.com/global/faces-of-innovation-galaxy-s7-s7-edge-how-we-created-the-cooling-system-in-the-galaxy-s7-and-s7-edge>.

¹⁶ *Ibid.*

1 in mind. It gives you the durability you want while boasting a sleek, lightweight design and all of
 2 the innovation the Galaxy S6 has to offer.”¹⁷

3 42. It is “[b]uilt to withstand whatever everyday life throws its way, the Samsung
 4 Galaxy S6 active has IP68 certified casing that is water resistant up to 1.5 meters for up to 30
 5 minutes, shock resistant, and dust proof.”¹⁸

6 43. According to Tim Baxter, President, Chief Operating Officer, and General Manager
 7 of Samsung: “With the Galaxy S6 active, we’re delivering consumers with high durability coupled
 8 with the powerful performance of Samsung’s latest flagship smartphone. The result is a
 9 smartphone that brings ruggedized capabilities and water resistance coupled with the camera,
 10 battery and design features that empower our consumers and business users to do more.”¹⁹

11 44. According to Kwangjin Bae, the Principal Engineer at IT & Mobile
 12 Communications, “the goal was to make Samsung latest flagship smartphone as strong and durable
 13 as possible,” for which, “[t]he development team for the Galaxy S6 worked around the clock. It
 14 was one of the most difficult times of my life and all the members of the group from bottom to the
 15 top worked together as one in developing the new product. It was not an easy task because it was
 16 uncharted territory for all of us.”²⁰

17 45. Samsung bragged: “[i]n introducing innovation, not only in design and engineering,
 18 but also in manufacturing processes, Samsung adheres to its notoriously strict quality control
 19 policy. Each product undergoes intense durability testing such as drop tests, bending test and
 20 performance testing among many other steps. Samsung takes to ensure the highest quality
 21 products. By fusing together innovation with durability, Samsung is able to provide the level of
 22 quality consumers expect from Samsung.”²¹

23
 24 ¹⁷ “Samsung Galaxy S6 active Available Exclusively at AT&T,” Samsung Newsroom (June 9, 2015)
 available at: <https://news.samsung.com/global/Samsung-galaxy-s6-active-available-exclusively-at-att>.

25 ¹⁸ *Ibid.*

¹⁹ *Ibid.*

26 ²⁰ “[Editorial] The Perfect Fusion: The Story Behind the Metal and Glass of the Galaxy S6,” Samsung
 Newsroom (June 1, 2015) available at: <https://news.Samsung.com/global/the-perfect-fusion-the-story-behind-the-metal-and-glass-of-the-galaxy-s6-ass-and-metal-was-not-without-its-challenges-the-story-behind-the-galaxy-s6-sound>.

27 ²¹ “Forming Glass, Metal Frame – The Art of Craftsmanship in the Galaxy S6,” Samsung Newsroom
 (March 2, 2015) available at: <https://news.samsung.com/global/forming-glass-forging-metal-the-art-of-craftsmanship-in-the-galaxy-s6>.

1 46. Samsung marketed the S6 Edge+ as being “More than a phone, it’s the hub of your
2 life, always with you, always on...you do everything with your phone... shouldn’t you expect
3 more from it?” And Samsung also worked to decrease the charging time, advertising that, on the
4 S6, S7 and Note 5 models that charging was faster than ever and the phone could be fully charged
5 in ninety minutes.

6 47. Samsung advertised the S6 as having “next level performance” and “next level
7 charging,” including built in wireless charging.

8 48. Samsung advertised and marketed the S7 models by explaining that it was “not just
9 launching a new phone, we are launching a new way of thinking about what a phone can do.”
10 Samsung stated, “our phones go everywhere with us,” and told consumers “Time is valuable. If
11 time is the most valuable thing, why would you waste time charging your phone” in advertising the
12 “fast charging” capabilities of the S7 models.

13 49. Samsung advertised the S7 Active as the “toughest Samsung ever” and touted its
14 battery performance and fast charging capability.

15 50. Despite these descriptions and marketing efforts, Samsung concealed from
16 consumers the risks of overheating, fire, and explosion posed by the Subject Phones. Samsung’s
17 omissions were material to consumers’ purchasing decisions in that had consumers been warned of
18 the dangers of the products, they would not have purchased the Subject Phones or would have paid
19 less for the Subject Phones than they paid.

20 51. Even while Samsung was performing its recalls of the Note 7, it continued to
21 attempt to conceal the scope of the problem. Samsung reportedly offered to pay at least one
22 consumer in China approximately \$900 to replace his Note 7 if he agreed not to publicize a video
23 of his smartphone overheating and smoking.²² Samsung has also issued copyright claims to
24 YouTube in order to take down parody videos posted by the public of the Note 7 bursting into
25 flames or exploding.²³ And despite the well-publicized recall of the Note 7, Samsung continues to
26

27 ²² Wee, Sui-Lee, “Samsung’s Uneven Handling of Galaxy Note 7 Fires Angers Chinese,” (available at
http://www.nytimes.com/2016/10/19/business/Samsung-galaxy-note7-china-test.html?_r=0).

28 ²³ BBC News, October 21, 2016, “Samsung ‘blocks’ exploding Note 7 parody videos” (available at
<http://www.bbc.com/news/technology-37713939>).

1 hide the risks of the Subject Phones, and has taken no steps to warn its customers or recall
 2 additional products subject to the same dangers, despite the fact that Samsung has yet to identify
 3 the cause of the overheating, explosions and fires in the Note 7 or the Subject Phones.

4 52. On October 12, 2016, in the midst of the Note 7 recalls, Samsung reportedly²⁴ sent
 5 push notifications directly to some of its consumers' smartphones:

6
 7 Safety Recall Notice

8
 9 Your Galaxy S7 is not an affected device.

10
 11 The Galaxy S7 is not subject to recall.
 12 You can continue to use your device normally

13
 14 53. Samsung knew the Subject Phones were defectively designed or manufactured,
 15 would fail without warning, posed a risk to the public, and were not suitable for their intended use.
 16 Until the problem became too widespread, publicized, and pervasive to ignore with the Note 7,
 17 Samsung failed to warn Plaintiff, the Class and the public about the inherent dangers of the Subject
 18 Phones, despite having a duty to do so. Additionally, Samsung has continued to fail to warn
 19 consumers of the dangers related to the Subject Phones, implying the Note 7 is an outlier and that
 20 Samsung's other products, including the Subject Phones, are safe.

21 54. Samsung owed Plaintiff a duty to disclose the defective nature of Subject Phones,
 22 including the dangerous risk of explosion, fire and overheating, because Samsung:

23 a. possessed exclusive knowledge of the defects rendering the Subject Phones
 24 inherently more dangerous and unreliable than similar smartphone products; and,

25 b. intentionally concealed and failed to disclose the dangerous situation with
 26 the Subject Phones through their marketing campaign and recall programs.

27
 28 ²⁴ Haselton, Todd "Samsung to Galaxy S7 Owners: Your Phone is NOT Recalled" (available at <http://www.technobuffalo.com/2016/10/12/galaxy-s7-not-recalled/>).

1 55. Samsung, and each of them, designed, engineered, developed, manufactured, tested,
2 produced, assembled, labeled, supplied, imported, distributed, and sold the Subject Phones and
3 their component parts and constituents, which were intended by Samsung, and each of them, to be
4 used as a consumer smartphone.

5 56. The Galaxy S6 is unsafe for its intended use by reason of defects in its design,
6 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
7 safely serve its purpose, but can instead expose the public and Plaintiff to serious injury.

8 57. The Galaxy S6 Edge is unsafe for its intended use by reason of defects in its design,
9 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
10 safely serve its purpose, but can instead expose the public and Plaintiff to serious injury.

11 58. The Galaxy S6 Edge+ is unsafe for its intended use by reason of defects in its
12 design, engineering, development, manufacturing, testing, production, and/or assembly, such that it
13 cannot safely serve its purpose, but can instead expose the public and Plaintiff to serious injury.

14 59. The Galaxy S6 Active is unsafe for its intended use by reason of defects in its
15 design, engineering, development, manufacturing, testing, production, and/or assembly, such that it
16 cannot safely serve its purpose, but can instead expose the public and Plaintiff to serious injury.

17 60. The Galaxy Note 5 is unsafe for its intended use by reason of defects in its design,
18 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
19 safely serve its purpose, but can instead expose the public and Plaintiff to serious injury.

20 61. The Galaxy S7 is unsafe for its intended use by reason of defects in its design,
21 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
22 safely serve its purpose, but can instead expose the public and Plaintiff to serious injury.

23 62. The Galaxy S7 Edge is unsafe for its intended use by reason of defects in its design,
24 engineering, development, manufacturing, testing, production, and/or assembly, such that it cannot
25 safely serve its purpose, but can instead expose the public and Plaintiff to serious injury.

26 63. The Galaxy S7 Active is unsafe for its intended use by reason of defects in its
27 design, engineering, development, manufacturing, testing, production, and/or assembly, such that it
28 cannot safely serve its purpose, but instead exposes the public and Plaintiff to serious injury.

1 E. **PLAINTIFF'S EXPERIENCE**

2 64. On or about June 3, 2016, Plaintiff purchased a Samsung S7 Edge in Milford,
3 Massachusetts. Plaintiff purchased the device for use by his son, and Plaintiff paid for the phone
4 and the cell phone plan. At no time was Plaintiff informed that the device was prone to
5 overheating, fire, and explosion.

6 65. On or about November 12, 2016, at approximately 3:00 AM EST, the S7 Edge
7 caught fire while it was plugged in to charge the battery in Plaintiff's son's room at Plaintiff's
8 residence in Hopkinton, Massachusetts. Plaintiff's son's mattress and bed sheets caught on fire and
9 his room was filled with black smoke. Fortunately, Plaintiff's son took quick action, and was able
10 to dump a glass of water on the fire, gather the phone and bed sheets together, run the bundle to the
11 front door and throw it onto the pavement outside. While Plaintiff's son ran the bundle to the front
12 door, the phone began melting and "dripped" molten metal on Plaintiff's throw rug, burning
13 several holes in the rug.

14 66. As a result of the fire, the S7 Edge melted and was rendered unusable. In addition,
15 Plaintiff had to replace his throw rug and his son's mattress, bedspread, and bed sheets. Had
16 Plaintiff's son not been awake at this time, the damage could have been much greater.

17 67. Photos of Plaintiff's phone after the fire are below:



68. Plaintiff went to his carrier (Sprint) to replace the S7 Edge. Plaintiff was told by Sprint that the replacement would have to go through his phone insurance, which would charge a \$200 deductible. Sprint also required Plaintiff to turn in the burned phone in order to proceed with the insurance claim. Plaintiff did not opt to replace the phone through Sprint.

V. CLASS ACTION ALLEGATIONS

69. Plaintiff brings this action, on behalf of himself individually and as a class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

All persons residing in the Commonwealth of Massachusetts who purchased, in the Commonwealth of Massachusetts, at least one (1) of the Subject Phones at any time during the four (4) year period preceding the filing of this Class Action Complaint and continuing through the date of trial. The Subject Phones are the S6, S6 Edge, S6 Edge+, S6 Active, S7, S7 Edge, S7 Active, and Note5 (see ¶ 23).

Excluded from the Class are Samsung, their employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; Class Counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case. Also excluded are any individuals claiming damages from personal injuries arising from an overheating, fire, explosion or other incident. Further excluded is any individual who after purchase of a Subject Phone returned the Subject Phone and received a full refund of his or her purchase price.

70. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Class. Plaintiff will formally define and designate the class definition when he seeks to certify the Class alleged herein.

71. Certification of Plaintiff's claim for class-wide treatment is appropriate because Plaintiff can prove the elements of his claim on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

72. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that individual joinder of all members of the Class is impracticable. Plaintiff believes there are thousands of members of the Class. The precise number of Class members and their addresses is presently unknown to Plaintiff, but may be ascertained from Samsung's books

1 and records. Class members may be notified of the pendency of this action by recognized, Court-
 2 approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet
 3 posting, and/or published notice.

4 73. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**
 5 **and 23(b)(3).** This action involves common questions of law and fact, which predominate over
 6 any questions affecting individual Class members, including, without limitation:

7 a. whether Samsung knew or should have known that the Subject Phones were prone
 8 to overheating, fire, and explosion;

9 b. whether Samsung omitted or concealed the fact that the Subject Phones were prone
 10 to overheating, fire, and explosion;

11 c. whether Plaintiff and the Class members have been injured due to Samsung's
 12 conduct and the proper measure of their losses as a result of those injuries;

13 d. whether Samsung was unjustly enriched at the expense of Plaintiff and the Class;
 14 and

15 e. whether Plaintiff and the Class are entitled to damages, restitution, disgorgement,
 16 injunctive relief, and/or other relief, and the amount and nature of such relief.

17 74. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claim is typical
 18 of the claims of the other Class members because, among other things, all Class members were
 19 comparably injured through the uniform misconduct described above. Plaintiff and other Class
 20 members received the same nondisclosures about the safety and quality of Subject Phones.
 21 Plaintiff and Class members purchased Samsung Galaxy S and Note products that they would not
 22 have purchased at all, or for as much as they had paid, had they known the truth regarding the
 23 overheating problems and fire hazards. Plaintiff and the members of the Class have sustained
 24 injury in that they overpaid for the Samsung smartphones due to Samsung's wrongful conduct.

25 75. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**
 26 Plaintiff is an adequate Class representative because his interests do not conflict with those of the
 27 Class members he seeks to represent; he has retained counsel competent and experienced in
 28 complex commercial and class action litigation; and Plaintiff intends to prosecute this action

1 vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and his
2 counsel.

3 76. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**
4 Samsung has acted or refused to act on grounds generally applicable to Plaintiff and the Class,
5 thereby making appropriate final injunctive and declaratory relief, as described below. In
6 particular, Samsung continues to sell the Subject Phones and has failed to properly warn
7 consumers of the risks of overheating, fire and explosion with the Subject Phones.

8 77. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior
9 to other available means for the fair and efficient adjudication of this controversy, and no unusual
10 difficulties are likely to be encountered in the management of this class action. The damages and
11 other financial detriment suffered by Plaintiff and the Class are relatively small compared to the
12 burden and expense that would be required to individually litigate their claims against Samsung, so
13 it would be impracticable for Class members to individually seek redress for Samsung's wrongful
14 conduct. Even if Class members could afford individual litigation, the court system could not.
15 Individualized litigation creates a potential for inconsistent or contradictory judgments, and
16 increases the delay and expense to all parties and the court system. By contrast, the class action
17 device presents far fewer management difficulties, and provides the benefits of single adjudication,
18 economy of scale, and comprehensive supervision by a single court.

19 **VI. CAUSES OF ACTION**

20 **COUNT I**
21 **Violation Of Massachusetts**
22 **Regulation Of Business Practices For Consumers Protection**
23 **MASS. GEN. LAW CH 93A**

24 78. Plaintiff and the Class hereby re-allege and incorporate by reference paragraphs 1-
25 77 as if fully set forth herein.

26 79. Mass. Gen. Laws ch. 93A § 2(a) makes unlawful all “[u]nfair methods of
27 competition and unfair or deceptive acts or practices in the conduct of any trade or commerce[.]”

28 80. Samsung, through its advertising and marketing of the Subject Phones, concealed
and failed to disclose that the Subject Phones were defectively designed and prone to overheating,

1 catching fire, and explosion despite knowing that such specific information was material to
2 Plaintiff and the Class.

3 81. Samsung fraudulently depicted the Subject Phones as safe. These depictions failed
4 to paint a true portrayal of the Subject Phones because Samsung concealed, and failed to disclose,
5 that the Subject Phones were defectively designed and prone to overheating, catching fire, and
6 explosion, despite sole and exclusive knowledge of those defects.

7 82. Samsung did not disclose to Plaintiff and the Class that the Subject Phones were
8 defectively designed and prone to overheating, catching fire, and explosion. Indeed, despite direct
9 knowledge to the contrary, Samsung continually failed to disclose to consumers that the Subject
10 Phones were defectively designed and prone to overheating, catching fire, and explosion.

11 83. Plaintiff and the Class interpreted Samsung's failure to disclose and omissions as a
12 representation that the Subject Phones did not pose the threat of danger by and through, among
13 others, overheating, fire, and/or explosion.

14 84. The facts concealed by Samsung are material facts because any reasonable
15 consumer would have considered important the Subject Phones' propensity to overheat, catch fire,
16 and explode in deciding whether to purchase the Subject Phones as opposed to another
17 smartphone.

18 85. At all times mentioned herein, Samsung was, and remain, in a superior position to
19 know the truth about the Subject Phones and their propensity to overheat, catch fire, and explode.

20 86. Mass. Gen. Laws. Ch. 93A § 9(1) provides:

21 Any person . . . who has been injured by another person's use or
22 employment of any method, act or practice declared to be unlawful
23 by section two . . . may bring an action in the superior court . . . for
damages and such equitable relief, including an injunction, as the
court deems to be necessary and proper.

24 87. Mass. Gen. Laws. Ch. 93A § 9(2) provides:

25 Any persons entitled to bring such action may, if the use or
26 employment of the unfair or deceptive act or practice has caused
27 similar injury to numerous other persons similarly situated and if the
28 court finds in a preliminary hearing that he adequately and fairly
represents such other persons, bring the action on behalf of himself
and such other similarly injured and situated persons[.]

1 94. Samsung enjoyed the benefit of increased financial gains, to the detriment of
2 Plaintiff and the Class, who paid a higher price for Subject Phones which actually had lower
3 values. It would be inequitable and unjust for Samsung to retain these wrongfully obtained profits.

4 95. Plaintiff therefore seeks an order establishing Samsung as constructive trustee of the
5 profits unjustly obtained, plus interest.

6 **VII. JURY DEMAND**

7 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all
8 claims in this Complaint so triable.

9 **VIII. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff Dale Holzworth Sr., individually and on behalf of the other
11 members of the Class proposed in this Complaint, respectfully requests that the Court enter an
12 Order awarding the following relief:

13 1. Certifying this action as a class action, designating Plaintiff as Class Representative
14 and appointing the undersigned as Class Counsel;

15 2. Awarding compensatory and actual damages, including restitution and
16 disgorgement of Samsung's revenues to Plaintiff and the other Class members generated from the
17 unlawful practices set forth herein;

18 3. Enjoining Samsung from continuing the unlawful practices set forth herein;

19 4. Awarding attorneys' fees and costs to Plaintiff; and

20 5. Such other and further relief as the Court deems just and proper.

21 Dated: May 3, 2017

Respectfully submitted,

22
23 **SIPRUT PC**

24 **COTCHETT, PITRE & McCARTHY, LLP**

25 **STONEBARGER LAW, APC**

26
27 /s/ Joseph J. Siprut
28 **JOSEPH J. SIPRUT***
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